

UNITED STATES DISTRICT COURT
for the

CV 422-246

David McCloskey
Petitioner
v.
Acting Warden Flowers
United States of America
Respondent
(name of warden or authorized person having custody of petitioner)

)
Case No. CR 418-260
(Supplied by Clerk of Court)
ERIK SO. DIST. CLERK, SAVANNAH DIV.
2021 OCT 21 PM 10:53
FILED
U.S. DISTRICT COURT
SAVANNAH DIV.
Signature

PETITION FOR A WRIT OF HABEAS CORPUS UNDER 28 U.S.C. § 2241

Personal Information

1. (a) Your full name: David Lawrence McCloskey
(b) Other names you have used: _____
2. Place of confinement:
 - (a) Name of institution: Federal Prison Camp Butner
 - (b) Address: P.O. Box 1000
Butner, NC 27509
 - (c) Your identification number: _____
3. Are you currently being held on orders by:

Federal authorities State authorities Other - explain: _____
4. Are you currently:

A pretrial detainee (waiting for trial on criminal charges)
 Serving a sentence (incarceration, parole, probation, etc.) after having been convicted of a crime

If you are currently serving a sentence, provide:

 - (a) Name and location of court that sentenced you: United States District Court Southern District of Georgia Savannah Division
 - (b) Docket number of criminal case: CR 418-260
 - (c) Date of sentencing: July 23, 2019

Being held on an immigration charge
 Other (explain): 18 U.S.C 922(g)(3) and 924 (A)(2) Possession of a firearm by a drug user.

Decision or Action You Are Challenging

5. What are you challenging in this petition:

How your sentence is being carried out, calculated, or credited by prison or parole authorities (for example, revocation or calculation of good time credits)

Pretrial detention

Immigration detention

Detainer

The validity of your conviction or sentence as imposed (for example, sentence beyond the statutory maximum or improperly calculated under the sentencing guidelines)

Disciplinary proceedings

Other (explain): *The charges are unconstitutional pursuant to Supreme Court ruling New York State v. Rifle; Pistol Assn., Inc. v. Bruen 142 S.Ct. 3111, 213 L. Ed 2d 387 6/22.*

6. Provide more information about the decision or action you are challenging:

(a) Name and location of the agency or court: United States District Court
Southern District of Georgia Savannah Division

(b) Docket number, case number, or opinion number: CR 418-260

(c) Decision or action you are challenging (for disciplinary proceedings, specify the penalties imposed):

(d) Date of the decision or action: _____

Your Earlier Challenges of the Decision or Action7. **First appeal**

Did you appeal the decision, file a grievance, or seek an administrative remedy?

Yes No

(a) If "Yes," provide:

(1) Name of the authority, agency, or court: _____

(2) Date of filing: _____

(3) Docket number, case number, or opinion number: _____

(4) Result: _____

(5) Date of result: _____

(6) Issues raised: _____

(b) If you answered "No," explain why you did not appeal: _____

8. **Second appeal**

After the first appeal, did you file a second appeal to a higher authority, agency, or court?

Yes No

(a) If "Yes," provide:

(1) Name of the authority, agency, or court: _____

(2) Date of filing: _____

(3) Docket number, case number, or opinion number: _____

(4) Result: _____

(5) Date of result: _____

(6) Issues raised: _____

(b) If you answered "No," explain why you did not file a second appeal: _____

9. **Third appeal**

After the second appeal, did you file a third appeal to a higher authority, agency, or court?

Yes No

(a) If "Yes," provide:

(1) Name of the authority, agency, or court: _____

(2) Date of filing: _____

(3) Docket number, case number, or opinion number: _____

(4) Result: _____

(5) Date of result: _____

(6) Issues raised: _____

(b) If you answered "No," explain why you did not file a third appeal: _____

10. **Motion under 28 U.S.C. § 2255**

In this petition, are you challenging the validity of your conviction or sentence as imposed?

Yes No

If "Yes," answer the following:

(a) Have you already filed a motion under 28 U.S.C. § 2255 that challenged this conviction or sentence?

Yes No

If "Yes," provide:

(1) Name of court: _____

(2) Case number: _____

(3) Date of filing: _____

(4) Result: _____

(5) Date of result: _____

(6) Issues raised: _____

(b) Have you ever filed a motion in a United States Court of Appeals under 28 U.S.C. § 2244(b)(3)(A), seeking permission to file a second or successive Section 2255 motion to challenge this conviction or sentence?

Yes No

If "Yes," provide:

(1) Name of court: _____

(2) Case number: _____

(3) Date of filing: _____

(4) Result: _____

(5) Date of result: _____

(6) Issues raised: _____

(c)

Explain why the remedy under 28 U.S.C. § 2255 is inadequate or ineffective to challenge your conviction or sentence: *I did not challenge the conviction on direct review because the State of the law at the time did not offer a reasonable basis for appeal.*

11. Appeals of immigration proceedings

Does this case concern immigration proceedings?

Yes No

If "Yes," provide:

(a) Date you were taken into immigration custody: _____

(b) Date of the removal or reinstatement order: _____

(c) Did you file an appeal with the Board of Immigration Appeals?

Yes No

If "Yes," provide:

(1) Date of filing: _____

(2) Case number: _____

(3) Result: _____

(4) Date of result: _____

(5) Issues raised: _____

(d)

Did you appeal the decision to the United States Court of Appeals?

Yes No

If "Yes," provide:

(1) Name of court: _____

(2) Date of filing: _____

(3) Case number: _____

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12. Other appeals

Other than the appeals you listed above, have you filed any other petition, application, or motion about the issues raised in this petition?

Yes No

No

If "Yes," provide:

(a) Kind of petition, motion, or application:

(b) Name of the authority, agency, or court:

(c) Date of filing:

(d) Docket number, case number, or opinion number:

(e) Result:

(f) Date of result:

(g) Issues raised:

Grounds for Your Challenge in This Petition

13. State every ground (reason) that supports your claim that you are being held in violation of the Constitution, laws, or treaties of the United States. Attach additional pages if you have more than four grounds. State the facts supporting each ground.

GROUND ONE: These charges are now unconstitutional pursuant to The Supreme Court ruling in Bruen. Bruen dictates that the statute had to be considered under a historical

(a) Supporting facts (Be brief. Do not cite cases or law.):

analysis alone, And must align with this Nations historical tradition. As a result Sec. 922(g) is unconstitutional

(b) Did you present Ground One in all appeals that were available to you?

Yes

No

GROUND TWO: Because a person who may use drugs is not always under the influence or high on drugs.

(a) Supporting facts (Be brief. Do not cite cases or law.):

A person who uses drugs is still protected under the 2nd Amendment plain text that also covers and individuals conduct, the Constitution presumptively protects that conduct.

(b) Did you present Ground Two in all appeals that were available to you?

Yes

No

GROUND THREE: The right to bear arms is not a second class right but a Constitutional right covered by 2nd and 14th Amendments.

(a) Supporting facts (Be brief. Do not cite cases or law.):

History is consistent with Common Sense: it demonstrates that legislatures have the power to prohibit dangerous people from possessing guns. But, that power extends only to people who are dangerous.

(b) Did you present Ground Three in all appeals that were available to you?

Yes

No

GROUND FOUR: I had not been deemed at the time a dangerous or violent citizen.

(a) Supporting facts (Be brief. Do not cite cases or law.):

To justify its gun regulation, the government must affirmatively prove that its fire arm regulation is part of the historical tradition that delimits the outerbounds of the right to keep and bear arms.

(b) Did you present Ground Four in all appeals that were available to you?

Yes No

14. If there are any grounds that you did not present in all appeals that were available to you, explain why you did not: The state of the law at the time did not offer a reasonable basis to appeal convictions

Request for Relief

15. State exactly what you want the court to do:

Varate the unconstitutional charges, and Convictions of 922(g)(3) and 924(A)(2)
Please seal all actions on this case in respects to case # CR 418-260

Declaration Under Penalty Of Perjury

If you are incarcerated, on what date did you place this petition in the prison mail system:

October 17, 2022

I declare under penalty of perjury that I am the petitioner, I have read this petition or had it read to me, and the information in this petition is true and correct. I understand that a false statement of a material fact may serve as the basis for prosecution for perjury.

Date: 10/17/2022

David McCloskey
Signature of Petitioner

Signature of Attorney or other authorized person, if any



RECEIVED

U.S. Marshals Service
Savannah, Georgia

THE UNITED STATES DISTRICT COURT
SOUTHEASTERN DISTRICT OF GEORGIA
SAVANNAH DIVISION
C/O CLERKS OFFICE
P.O.BOX 8286
SAVANNAH, GA 31412

DAVID MCCLOSKEY REC #22814-021
FPC BUTNER
P.O.BOX 1000
BUTNER, NC 27509